

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MICHIGAN REHABILITATION
CLINIC INCORPORATED, P.C. AND
DR. JAMES NIKOLOVSKI, et al.,

Plaintiffs,

Civil No. 03-74374
Hon. John Feikens

v.

CITY OF DETROIT,

Defendant.

_____ /

OPINION AND ORDER

This case, alleging improper lack of access to police records, was removed by defendant Detroit to this court on federal question grounds. Plaintiff now moves to remand this case back to the state court. For the reasons discussed below, I DENY this motion.

Factual Background

Plaintiffs wish to have access to car accident reports prepared by the Detroit Police Department. The police department instituted a policy that bans anyone except insurance companies or their subcontracted investigators from looking at those reports. Plaintiffs allege this policy unconstitutionally blocks their access to public records.

Analysis

Any civil action brought in a State court of which the federal courts have original

jurisdiction may be removed by the defendant to the district and division embracing the place where such action is pending. 28 U.S.C. §1441. A case can only be removed to federal court under federal question jurisdiction when the plaintiff's complaint (and not the defendant's answer) raises an issue of federal law. Caterpillar, Inc. v. Williams, 482 U.S. 386, 393 (1987).

Here, plaintiffs argue that because their cause of action "is not founded on a claim or right arising under the Constitution, treaties, or laws of the United States," removal here was improper. (Pl.'s Br. in Support, 4.) However, this is clearly belied by paragraphs 13 and 15 of their complaint.

Paragraph 13 of the complaint reads: "That a governmental agency can be held vicariously liable when its officers [...] acting during the course of their employment and within the scope of their authority deny persons access to public information not properly protected from dissemination by the Fourth Amendment to the U.S.

Constitution." Paragraph 15 of the complaint reads: "That Defendant City of Detroit is liable for its creation and perpetuation of a policy and/or practice that denied Plaintiffs access to public information not properly protected by the Fourth Amendment to the U.S. Constitution." Thus, on the face of the complaint, there are explicitly federal questions raised. Moreover, because these questions go to the same nucleus of operative fact (the denial of access to the records) as the other issues raised in the complaint, this case could have been brought in its entirety in federal court. Therefore, the removal to federal court under 28 U.S.C. §1441 et seq. was appropriate.

Conclusion

As plaintiffs explicitly raise federal questions in their complaint by citing the U.S. (not State of Michigan) Constitution, the case was properly removed to this court and plaintiffs' Motion to Remand is DENIED.

IT IS SO ORDERED.

John Feikens
United States District Judge

Date: _____